

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.6289 of 2017
and
W.M.P.No.6777 of 2017

Chidambaram.S

... Petitioner

Vs

1. The Managing Director
Tamil Nadu State Transport Corporation Ltd.
37, Mettupalayam Road,
Coimbatore - 641 043.

2. General Manager
Tamil Nadu State Transport Corporation Ltd.
Coimbatore Region
37, Mettupalayam Road
Coimbatore - 641 043.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent issued under reference 1902/HRD/E3A-PD1/TNSTC(Cbe)/17 dated 04.03.2017 in respect of the petitioner and quash the same as illegal, arbitrary.

For Petitioner : Mr.L.Chandrakumar
For Mr.A.Rajendiran

For Respondents : Mr.P.Kannankumar

ORDER

The order of transfer issued by the first respondent in proceedings dated 4th March 2017 is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner that the writ petitioner is working as a Special Grade Driver in the respondent corporation and he is having 6 more months of

service to attain the age of superannuation. Under these circumstances, the writ petitioner was transferred from Sungam - 1 branch of Coimbatore city to Ooty - 2 branch of Ooty region.

3. The learned counsel appearing for the writ petitioner made a submission that after the amalgamation of the Corporation, a protection was given to the employees in respect of the transfer from one region to another region. The Coimbatore is a separate region and the Udagamandalam is also a separate region and therefore, transferring the writ petitioner from Coimbatore to Ooty would amount to violation of protection granted in the Amalgamation order issued on 7th November 2000.

4. In this regard, the learned counsel also cited the judgment of this Court passed in W.P.No.3257 of 2007 dated 11.09.2007. This Court considered the conditions of clause 9 of the Amendment order and granted the relief in respect of the batch of cases and the relevant paragraphs are extracted hereunder:

"14. The only question that arises for consideration is whether the transfer orders issued by the General Manager, Kancheepuram. Clause 9 is very relevant for the purpose of deciding Division is in violation of the Amalgamation order 2003 dated 30.12.2003.

15. A copy of the Amalgamation order was made available in the typed set of papers. Clause 9 is very relevant for the purpose of deciding Division is in violation of the Amalgamation order 2003 dated 30.12.2003.

g the writ petitions and according to the writ petitioners, it is the clause 9 of g the writ petitions and according to the writ petitioners, it is the clause 9 of the Amalgamation order which has been violated while issuing the transfer orders. Clause 9 is extracted below for better appreciation.

"9. Provisions regarding existing officers and other employees of the dissolved companies : Every wholetime officer or other employee (excluding the directors of the dissolved companies) employed immediately before the appointed day, become an officer or other employee as the case may be of the resulting company and shall hold his office or service therein by the same obligations and with the same rights and as he would have held the same under the dissolved companies, if this order has not been made and shall continue to do so unless and until his employment in the resulting company is duly terminated or until his remuneration and conditions of other than officers as it existed in the respective companies. Immediately before the

appointed date shall be maintained, implying that the seniority, promotional opportunities and transfer among employees upto supervisory level shall remain protected even after amalgamation in the resulting company in respect of employees on roll at the time of issue of this order. The employees recruited thereafter would be transferred within the jurisdiction of the resulting company. The promotions from supervisory cadre to managerial cadre shall however be as per seniority within the resulting company. The seniority among the managerial cadre shall be recast within the resulting company on merger."

16. From the above, it is very clear that the seniority, promotional opportunities and transfer among employees upto supervisory level shall remain protected even after amalgamation in the resulting company in respect of employees on roll at the time of issuing the amalgamation order. In such circumstances, I find force in the submission of the learned Senior Counsel for the writ petitioners that the transfer orders issued without the consent are not sustainable in

view of Clause 9 of the Amalgamation order. Therefore, I reject the arguments of the learned Special Government Pleader that these orders were passed on the basis of the administrative policy and therefore they could not be questioned under Article 226 of the Constitution of India.

17. At the same time, I am aware that W.P.No.3369 of 2007 was filed by the Union in the representative capacity challenging the transfer orders of 54 employees. It is not denied by the Union that the 54 employees, whose names are shown in the annexure of the writ petition joined the new region. In fact, it was admitted by them in the reply affidavit filed by them. They want a direction from this Court to permit them to serve in their original place by restoring the status quo ante as on 16.01.2007.

18. Considering the fact that all the 54 employees have joined the new region pursuant to the order of transfer and considering the fact that none of the 54 employees individually challenged the order of transfer them to the new region. At the same time, a direction is issued to the Transport Corporation not to alter the service conditions of the employees as stipulated and as contained in the amalgamation order 2003 dated 30.12.2003.

19. Since individual employees approached this Court in W.P.No.3257 of 2007, W.P.No.4767 of 2007 and W.P.No.5322 of 2007 and they obtained order, I am directing the respondents not to give effect to those transfer orders.

20. Consequently, the transfer order dated 20.01.2007 in W.P.No. 5322 of 2007 is quashed and the writ petition is allowed. Similarly, the transfer order dated 25.01.2007 in W.P.No.4567 of 2007 is also quashed and the writ petitioner in W.P.No.3257 of 2007 as granted in W.P.No.3369 of 2007 with an additional direction not to give effect to the transfer order dated 19.01.2007 in so far as that writ petition alone is concerned."

5. In view of the decisions rendered in the batch of writ petitions cited supra, the case on hand also required to be considered. Accordingly, the order impugned in this writ petition issued by the first respondent in proceedings 1902/HRD/E3A-PD1/TNSTC (Cbe) /17 dated 04.03.2017 is quashed and the writ petition stands allowed. Consequently, connected miscellaneous petition is closed. However, there is no order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

may
To

1. The Managing Director
Tamil Nadu State Transport Corporation Ltd.
37, Mettupalayam Road,
Coimbatore - 641 043.

2. General Manager
Tamil Nadu State Transport Corporation Ltd.
Coimbatore Region
37, Mettupalayam Road
Coimbatore - 641 043.

+1cc to Mr.A.Rajendiran, Advocate Sr. 66285
+1cc to Mr.P.Kannankumar, Advocate Sr. 66306

W.P.No.6289 of 2017

SK(CO)
VR(05/10/2017)